

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MOTION TO DISMISS

COMES NOW Defendant Randy Allen and moves the Court for an Order dismissing the Plaintiff's Claims against him. As grounds therefor, Randy Allen submits as follows:

1. On June 17, 2005, Plaintiff Terry Parham filed a Complaint against United Parcel Service (herein after "UPS") seeking both workers' compensation benefits and general damages for breach of duty, for injuries he sustained when he allegedly fell from a UPS tractor-trailer on April 14, 2004. That claim is currently pending in the Circuit Court of Montgomery County, Civil Action Number CV-2005-1522. [Complaint, a copy of which is attached as "Exhibit 1"].

2. On July 18, 2005, Defendant UPS filed an Answer to the Plaintiff's Complaint and a Motion to Dismiss the Breach of Duty Claim of the Plaintiff's Complaint pursuant to the Exclusivity Clause of the Alabama Workers' Compensation Statute. [Answer and Motion to Dismiss, copies of which are attached as "Exhibit 2"]. After hearings on the Motion to Dismiss, Plaintiff voluntarily agreed to amend the Complaint substituting the breach of duty claim for a co-employee liability claim. On September 28, 2005, Plaintiff filed an Amended Complaint adding Randy Allen as a defendant under a theory of co-employee liability. [Amended Complaint, a copy of which is attached as "Exhibit 3"].

3. On November 18, 2005, Defendant Allen filed an Answer to Plaintiff's Complaint and subsequently filed a Motion to Sever Plaintiff's co-employee liability claim from the workers' compensation claim on December 19, 2005. The Motion to Sever was granted on December 21, 2005. [Answer and Motion to Sever, copies of which are attached as "Exhibit 4"].

4. In addition to the pleadings identified above, Terry Parham filed a second Complaint against Randy Allen on April 12, 2006, styled as *Terry Parham v. Randy Allen and Mack Trucks, Inc.*, Civil Action Number CV-2006-1011. [Complaint, a copy of which is attached hereto as "Exhibit 5"]. The allegations in that Complaint arose from the same accident referenced in the first lawsuit. As such, there existed two separate actions pending in the Circuit Court of Montgomery County addressing the same claims against Defendant Allen.

5. Defendant Randy Allen moved to have the claims asserted against him in CV-2006-1011 dismissed, or in the alternative consolidated, citing them as unnecessarily cumulative, an undue waste of judicial resources, and unfairly prejudicial, on May 9, 2006. The Circuit Court of Montgomery County granted Defendant's Motion on May 15, 2006 and consolidated the claims against Defendant Allen in CV-2005-1522 with those in CV-2006-1011.

6. After the consolidation of the claims against Defendant Allen, Defendant Mack Trucks filed a Notice of Removal on May 26, 2006, seeking to have the matter removed to Federal Court. The matter was so removed and was brought before this Court.

7. Since there exists consolidated claims previously filed and pending in state court against Defendant Allen, the claims against him before this court are due to be dismissed as unnecessarily cumulative and unfairly prejudicial.

WHEREFORE, premises considered, Randy Allen respectfully requests that the Court enter an Order dismissing Terry Parham's claims against Randy Allen found before this Court.

Respectfully Submitted,

s/ Brett A. Ross

Brett A. Ross (ASB 6771-O-76-B)

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following on this the 11th day of July, 2006:

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s/ Brett A. Ross
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